88-970

Supreme Court, U.S.
FILED
DEC 10 1988
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1988

INA ROSELIN, Appellant, and CHARLES D. ROSELIN, Petitioner, vs. MANSOOR A.ARAIN, Respondent.	:	ON PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the United States:

A petition for a writ of certiorari of the judgment in 28,458 [redacted] of the Supreme Court of New Jersey is hereby submitted to this court.

CHARLES D. ROSELIN
Petitioner
198 South Prospect Avenue
Bergenfield, New Jersey 07621
Tel. (201) 385-9383

RECEIVED
[redacted]
OFFICE OF THE CLERK
SUPREME COURT, U.S.

30 pp

QUESTION FOR REVIEW

SHALL THE SUPREME COURT OF NEW JERSEY BE PERMITTED TO ISSUE A MANIFEST DENIAL OF JUSTICE, DENYING THE RIGHT TO BE HEARD; WHEN:

A. THE APPELLATE DIVISION OF SUPERIOR COURT DELIVERED AN AFFIRMING DECISION STATEDLY BASED UPON TWO (2) COURT ORDERS THAT ARE CLEARLY EX-PARTE AND EXTRAORDINARY; AS FOLLOWS:

1. Court Order Dated May 4, 1984, Was Signed SIX (6) DAYS PRIOR To The Hearing Date Specified By That Notice Of Motion.

2. Court Order Signed September 20, 1984, On Plaintiff's Motion, Threatens Plaintiff With A Warrant For Her Own Arrest.

B. AN APPELLATE COURT DECISION GRANTED AFFIRMANCE WITHOUT AN OPINION; WHEN THE MATTER CONCERNS:

1. Unprecedented Decisions On Equitable Distribution, Equitable Conversion, And Home Receivership.

2. The Right To Procedural Due Process, Neither A Plenary Hearing Nor Any Oral Hearing Has Been Granted.

C. THE SUPREME COURT OF NEW JERSEY DENIED CERTIFICATION WHEREAS THE MATTER CLEARLY SATISFIES RULE 2:12-4, GROUNDS FOR CERTIFICATION, SINCE THE MATTER CONCERNS:

1. The Right Of First Refusal To Buy Out Ones Own Property.

2. Senate Bill No. 1160, Introduced To The New Jersey Legislature, In The Above Regard.

To the Supreme Court of the United States, Honorable Members:

The within matter of writ for certiorari, with regard to an appeal in a post-judgment matrimonial proceeding, in the Family Part, Superior Court of New Jersey, Bergen County; Challenges said Court's interpretation of the equitable distribution law, enacted by the New Jersey Legislature, by its 1971 amendment of N.J.S.A. 2A:34-23.

The matter, of fundamental nature, on its face, appearing to be predicated upon procedural error, should not have progressed beyond the appellate division of the family Court, and certainly should not have had to burden this Court.

Whereas, the petitioner now contends that the very nature of errors evidenced, are alleged to be indicative of the prevailing judicial procedure as is apparently practiced by the Family Court of Bergen County, and further condoned by the Appellate Division thereof. Moreover, the Supreme Court of New Jersey has denied a petition for certification.

Said judicial procedure is claimed to be unconstitutional, alleged to be in violation of matrimonial litigants' rights to due process, whereas; in violation or rights to both procedural due process and substantive due process.

The alleged breach of procedural due process, is exemplified with evidence submitted thereof, as follows:

a) A crucial Court Order and combined decision, was signed on May 4, 1984, six (6) days prior to the return date, specified as May 10, 1984 or as soon thereafter, on that notice of motion. (Attached herewith as Exhibits A & B.)

b) By Family Court Order of September 20, 1984, plaintiff was threatened with police arrest, on plaintiff's own motion, whereas; said Court's written decision did not grant same. (Attached as Exhibits C & D-2b.)

c) Throughout proceedings the Court refused to hold a plenary hearing, whereas; said Court refused to hold any oral hearing on all of the many petitions submitted thereto.

The underlying appeal challenges the order of appointment of a receiver to the marital home, signed March 31, 1987, on behalf of the intervenor-respondent, as was proposed by the judgment in 208 N.J. Super. 612 (App.Div.1986).

Said judgment obviously appears to be erroneous considering the narrow interpretation therein of New Jersey's equitable distribution law. Since the N.J. Legislature unquestionably intended this law to exclusively benefit the interests of divorce litigants, and their family. Whereas, ironically, the review of said judgment will reveal that no consideration had been given to divorce litigant's rights, while considering only the rights of the intervenor.

Furthermore, the basis of said appellate decision consists of two extraordinary ex-parte orders. One, denying the right of first refusal to purchase the marital home, also denying oral argument, and signed six days before the matter was noticed to be heard. Thereby, in effect, enforcing an expiring contract, contrary to agreed intent, and contrary to the tenet of CORBIN ON CONTRACTS - "Courts do NOT make contracts."

The second (extraordinary ex-parte) order, cited as the basis of an Appellate Court decision, actually threatened both divorce litigants, plaintiff and defendant, with warrants for their arrest, on plaintiff's motion. An obvious indication of the unilateral intent of the trial judge and plaintiff's attorney, while opposed by both divorce litigants.

The foregoing extraordinary ex-parte orders, are instant examples of apparent "stale" court procedure. Whereas, these orders were acknowledged to be the very basis of an annotated appellate affirmance decision that, among other legal deviations, narrowly interprets or alters, the "cardinal equitable principle," stating:

> Equity regards as done that which is required to be done.(208 N.J. Super.617)

Whereas; POMEROY'S EQUITY JURISPRUDENCE unequivocally declares:

> Equity regards and treats as done what in good concience ought to be done.

Furthermore, the Supreme Court of New Jersey is apparently aware that such extraordinary judicial procedure has been rampant, particularly

with regard to the Family Court. Whereby, general corrective measures have been introduced, as is apparent with regard to the following:

The New Jersey Law Journal, April 28, 1988 N.J.L.J. Index Page 841, reported:

Rotation of Judicial Assignments

From: Chief Justice Robert N. Wilentz

"Judges can get stale .... sometimes the public interest requires rotation (of judges, including training). I know of no better example than the Family Division whose work is second to none in its impact on society, ..."

Accordingly, the petitioner herein contends that the New Jersey Supreme Court's failure to take any corrective measures in the within family matter constitutes a Manifest Denial of Justice; in effect condoning the deprivation of property without due process of law; in gross violation of the 14th amendment to the Constitution of the United States.

Therefore, in consideration of all the above, the undersigned petitioner respectfully requests the right to be heard; that the Supreme Court grant a writ of certiorari, or, any other relief that may please the Court.

CHARLES D. ROSELIN

APPENDIX

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Exhibit 'A', combined decision and ex-parte Order, signed May 4, 1984.....	1a
Exhibit 'B', plf notice of motion on above order, returnable May 10, 1984.....	3a
Exhibit 'C', decision on plf motion, decided Aug. 10, 1984.....	5a
Exhibit 'D', ex-parte Order on above motion, signed Sept. 20, 1984.....	7a
Appel. dec. on joint appeal filed Mar. 17, 1986 (208 NJ Super, 612).....	10a
Order granting receivership filed March 31, 1987.....	17a-1
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PAUL W. ROSS
52 Main Street
Hackensack, N.J. 07601
(201) 488-4300
Atorney for Plaintiff

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BERGEN COUNTY

Plaintiff :

INA ROSELIN :

VS. :

Defendant :

CHARLES ROSELIN :

Docket No. M 3901 79
79-3643

CIVIL ACTION

ORDER

THIS MATTER having been brought before the Court on the Motion of PAUL W. ROSS, Attorney for the Plaintiff, INA ROSELIN, and the Court having considered the matter and for other good cause shown;

IT IS on this 4 day of May, 1984, ORDERED that CHARLES ROSELIN execute a contract for sale of premises known as 198 South Prospect Avenue, Bergenfield, New Jersey and to execute the appropriate deed and affidavit of title at the time of closing of title, Providing that the purchase price of $90,000 equals or exceeds the value placed upon the property by Joseph Burek, court appointed real estate expert. If not, denied.

Exhibit "A"

It is further ORDERED that the Defendant, CHARLES ROSELIN, vacate the premisis on the date of closing of title to the premises and remove all of his property from the premises and to leave the same in broom-clean condition, subject to #1 above.

It is further ORDERED that CHARLES ROSELIN pay reasonable attorney's fees and costs incurred by INA ROSELIN in prosecuting this Motion, in the sum of $200.00.

It is further ORDERED that pltfs application that CHARLES ROSELIN give an accounting to INA ROSELIN of all rents, issues and profits during the period of time that he occupied the subject premises and to account to INA ROSELIN for the reasonable rental value of the premises during this period of time; is denied.

In the alternative, requiring CHARLES ROSELIN to pay INA ROSELIN one half the value of the premises; is denied.

s/ JUDGE CONRAD W. KRAFTE,
J.S.C.

PAUL W. ROSS
52 Main Street
Hackensack, N.J. 07601
(201) 488-4300
Attorney for Plaintiff

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BERGEN COUNTY

Plaintiff	:	Docket No. M 3901-79
INA ROSELIN	:	
	:	CIVIL ACTION
vs.	:	
	:	NOTICE OF MOTION TO
Defendant	:	ENFORCE LITIGANT'S RIGHTS
CHARLES ROSELIN	:	

PLEASE TAKE NOTICE that on May 10, 1984, at 9:00 a.m. in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorney for the Plaintiff, INA ROSELIN, will apply before the Superior Court, Chancery Division, Bergen County, Bergen County Court House, Hackensack, New Jersey for the following relief:

a) For an Order compelling the Defendant, CHARLES ROSELIN, to execute a contract for sale of premises known as 198 South Prospect Avenue, Bergenfield,New Jersey in the form attached hereto as Exhibit A, and to execute the appropriate deed and affidavit of title at the time of closing of title.

Exhibit "B"

b) For an Order directing the defendant, CHARLES ROSELIN to vacate the premises on the date of closing of title to the premises; to remove all of his property from the premises and to leave the same in broom-clean condition.

c) For an Order directing CHARLES ROSELIN to pay the reasonable attorney's fees and costs incurred by INA ROSELIN in prosecuting this Motion.

d) For an Order directing CHARLES ROSELIN to give an accounting to INA ROSELIN of all rents, issues and profits during the period of time that he occupied the subject premises and to account to INA ROSELIN for the reasonable rental value of the premises during this period of time.

e) In the alternative, for an Order requiring CHARLES ROSELIN to pay INA ROSELIN one half the value of the premises.

f) For such other relief as the Court may deem equitable.

The Undersigned will rely upon the annexed affidavit of the plaintiff. The plaintiff requests oral argument in this case.

s/ PAUL W. ROSS Attny for Pltf s/ INA ROSELIN

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - FAMILY PART

CONRAD W. KRAFTE
JUDGE

COURT HOUSE
HACKENSACK, N.J.

August 10, 1984.

Paul W. Ross, Esq.
52 Main Street
Hackensack, N.J. 07601

Mr. Charles D. Roselin,
198 So. Prospect Avenue,
Bergenfield, N.J. 07621

Re: Roselin v. Roselin, M-3901-79, 79-3643

Gentlemen:

The following is my decision on the motion returnable August 10, 1984:

Plaintiff's motion:

1. With regard to compelling defendant to execute the Contract of Sale to premises known as 198 S. Prospect Avenue, Bergenfield,NJ:

Granted. If not executed within 10 days, a warrent shall issue on 24 hours notice to defendant.

2. As to compelling defendant and plaintiff to execute a Bargain & Sale Deed, Covenant against Grantor's Acts to the premises to sell the same to Mansoor Arain:

Granted. If not executed within 10 days, a warrent shall issue on 24 hours notice to defendant.

3. With regard to compelling that the net proceeds of the sale after payment of liens and mortgages shall be held in escrow by the Court pending resolution of the Appeal in this case:

Exhibit "C"

Re: Roselin v. Roselin, M-3901-79, 79-3643

4. As to cousel fees and costs to plaintiff's attorney regarding the sale of the house:

The sum of $250.00, no costs. Judgment entered.

5. As to payment of the Court appointed appraiser:

This was not addressed in the moving papers. Denied without prejudice.

6. As to providing that in the event defendant or plaintiff, or either of them, shall fail to execute the deed as aforesaid, that a judicial deed shall be executed.

See above.

Defendant's motion:

1. As to ordering a subpoena duces tecum upon plaintiff and upon the health food business known as Health Way International, Tenafly,Inc.:

Denied. Insufficient reasons have been furnished by defendant. He is engaging in a "fishing expedition".

2. With regard to vacating plaintiff's Notice of Motion in its entirety:

Denied.

3. As to allowing for an alternative purchaser of subject premises as is applicable:

Denied.

Mr. Ross shall prepare and submit the order pursuant to Rule 4:42-1(b). Please forward the original and five copies of the order together with one stamped addressed envelope for Mr. Roselin. Include the Bergen County Calendar Number as well as the Docket Number on all papers.

CWK:md

Very truly yours,
s/ CONRAD W. KRAFTE, J.S

PAUL W. ROSS
52 Main Street
Hackensack, N.J. 07601
(201) 488-4300
Attorney for Plaintiff

RECEIVED
SEP 12 1984
CONRAD W. KRAFTE
J.S.C.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BERGEN COUNTY

Plaintiff :
INA ROSELIN :
: Docket No. M 3901-79
vs. : 79-3643
: CIVIL ACTION
Defendant : ORDER
CHARLES ROSELIN :

THIS MATTER having been brought before the Court on motion of Paul W. Ross, Attorney for Plaintiff, INA ROSELIN, and the Court having considered the pleadings filed by both the Plaintiff and Defendant, and for good cause shown;

IT IS on this 20 day of Sept., 1984, ORDERED as follows:

a) CHARLES ROSELIN is ORDERED to execute the contract of sale to premises known as 198 South Prospect Avenue, Bergenfield, New Jersey in accordance with the contract heretofore submitted to the Court. In the event the Contract is not executed within ten (10) days of the date hereof a warrant for the arrest of CHARLES ROSELIN shall issue on

twenty-four (24) hours notice to CHARLES ROSELIN.

b) CHARLES ROSELIN and INA ROSELIN are ordered to execute the Bargain and Sale Deed, Covenant Against Grantors' Acts, to Mansoor Arain, regarding the subject premises. In the event that the aforesaid Deed is not executed within ten (10) days of the date hereof a warrant for the arrest of CHARLES ROSELIN or INA ROSELIN or either or them shall issue on twenty-four (24) hours notice.

c) The net proceeds of the sale after the payment of liens and mortgages shall be held in ecrow by plaintiff's attorney in an interest bearing trust account.

d) Judgment is hereby entered in the amount of $250.00 no costs, in favor of plaintiff's attorney regarding sale of the house.

e) The request to pay the Court appointed appraiser is denied without prejudice. This was not addressed in the moving papers.

f) The defendant's cross motion for issuance and service of a subpoena duces tecum upon plaintiff and upon the health food business, known as Healthway International

Tenafly, Inc., is denied. Insufficient reasons have been furnished by the defendant.

h) Defendant's crossmotion to vacate the plaintiff's notice of motion in its entirety is denied.

i) The defendant's motion to seek and alternate purchaser of the subject premises is denied.

s/ CONRAD W. KRAFTE,
J.S.C.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3141-84T6/A-3389-84T6

INA ROSELIN,

Plaintiff-Appellant,

v.

CHARLES ROSELIN,

Defendant-Appellant,

v.

MANSOOR A. ARAIN,

Intervenor-Respondent.

ORIGINAL FILED
MAR 17 1986
ELIZABETH McLAUGHLIN

Submitted March 4, 1986 - Decided MAR 17 1986

Before Judges Pressler, Drier and Bilder.

On appeal from the Superior Court, Bergen County, Chancery Division

Appellants filed a joint brief pro-se.

Richard W. Engelbart, attorney for respondent.

The opinion of the court was delivered by

PRESSLER, P.J.A.D.

This is an appeal in a post-judgment matrimonial proceeding challenging two orders entered by the Family Part, one entered on March 12, 1985, and one entered on March 28, 1985, both of which, in effect, confirmed prior orders of the court dealing with the marital residence.

The backround of this controversy is set forth in our previous opinion in this matter

filed on December 11, 1984, under docket numbers A-684-83T3 and A-4122-83T3. Suffice it to say that we there affirmed, among other dispositions made by the trial judge, his order of May 4, 1984, by which he directed Charles Roselin to execute the contract for sale of the marital residence to Mansoor A. Arain. The contract had already been executed both by plaintiff Ina Roselin and Arain, the court having assured itself, by an up-to-date appraisal, of the fairness of the purchase price.
We further point out that during the pendency of that appeal and in response to yet another enforcement motion brought by plaintiff, the trial judge, by order entered on September 20, 1984, confirmed his direction to defendent to sign the contract.

The simple and indeed sad fact is that defendant does not want to either vacate or sell the marital residence and, therefore, has persistently refused to comply with any of the court's orders, including those which we affirmed. Arain, on the other hand, remains ready, willing and able to consummate the purchase and has been attempting to do so.

The events leading to this latest chapter of the controversy began on the very date our 1984 opinion was filed when defendant moved for vacation of the September 20, 1984 order "on the basis of new material." The new material was an offer by his sister, Millicent Roselin, to purchase the property for $2,500 more than the Arain contract price. The sister apparently is willing to permit defendant's continued residence. On December 21, 1984, plaintiff, who up to this point had actively sought the court's aid in consummating the Arain transaction, wrote to the trial judge joining in defendant's application. Her letter, in part, stated:

> I am desperately trying to maintain a sense of balance in the midst of this grotesque nightmare I have been living thru for the past five years.
>
> * * *
>
> I would like to add that my daughter Rita is now living with Charles. And both girls seem to be happy there. Rita moved in because the Electric Company shut off the electricity in their house.
>
> Once again, I would be grateful if you will allow Millicent Roselin to purchase the house so this sad case can be over with some joy for me.

The trial judge dismissed defendant's motion without prejudice, pointing out to him that "since third parties are involved I will make no order unless they are, also, served with notice." On January 14, 1985, defendant renewed his motion,

this time noticing Arain's attorney, who had been an observer of all prior proceedings, including the appeal and motions made to this court during its pendency. Plaintiff, still appearing pro-se, filed a cross-motion joining in defendant's latest application. Both motions were denied by order entered on March 12, 1985, the first of the orders here appealed from. The court's letter decision explained that it found "no legal basis for altering its ruling."

In the meantime, upon being noticed of defendant's January 1985 reconsideration motion, Arain moved for leave to intervene and for an order directing both defendant and plaintiff to execute the necessary deed in consummation of the contract. These motions were granted by order entered on March 28, 1985, the second of the orders appealed from by both plaintiff and defendant. We affirm both orders.

It needs hardly be said that the Legislature's enactment of the equitable distribution law by its 1971 amendment of N.J.S.A. 2A:34-23 effected radical changes in the financial consequences of divorce. The basic predicates of those changes were the creation of the concept of a marital estate and the

empowering of the court to direct specific disposition of that estate in order equitably to divide the marital assets between the spouses irrespective of legal title, inter se, to those assets. Thus, as we said in Sisco v. New Jersey Bank, N.A., 158N.J.Super. 111,122 (App.Div.1978):

> Courts are now empowered in divorce proceedings to allocate marital assets equitably between spouses, regardless of ownership. Painter v. Painter, 65 N.J. 196, 213 (1974). To that end the court may direct the sale of an asset and the distribution of the proceeds thereof between the spouses in such proportions as it deems fair in the circumstances. This applies as well to the marital home, irrespective of its ownership by the spouses, prior to the divorce judgment, as tenants by the entirety.

We have no doubt that in appropriate circumstances the court may not only direct a sale in general terms but may also direct that a recalcitrant party participate in a fair and reasonable sale proposed by the other party. See R. 4:59-2(a). The circumstances for such a direction were certainly appropriate here. The original judgment of divorce, which directed a sale and determined the respective rights of the parties to the proceeds thereof, was entered on June 14, 1982. During the course of the next two years, plaintiff repeatedly sought the assistance of the court in enforcing the sale order, which

defendant continued to violate. He refused to vacate the premises, he refused to permit real estate brokers access to the premises, and he permitted the premises to deteriorate, prejudicing its value and plaintiff's opportunity to realize the financial benefit of the court's equitable distribution scheme. It was she who finally found a purchaser willing, for a fair and reasonable price, to buy the property in circumstances which would have daunted less determined potential buyers. She executed the contract, thereby binding herself to its terms, and the purchaser did the same. The trial judge having been fully apprised of all of these circumstances, exercised his discretion in an entirely appropriate manner by requiring defendant to participate with plaintiff in the sale. At that point an equitable conversion took place, and the buyer, consequently, was thereby accorded the legal rights of a contract purchaser.[1] Cf. Witt v. Witt, 165 N.J.Super. 463 Ch.Div.1979).

---

1 The order directing defendant to sign the contract was tantamount to his actuall having signed it since equity regards as done that which is required to be done. See Martindell v. Fiduciary Counsel, Inc., 133 N.J.Eq. 408 (E. & A. 1943).

Insofar as legal obligations are concerned, it is too late for plaintiff to change her mind. She executed the contract. It is also too late for defendant now to say that he will abide by the 1982 judgment requiring the sale if he can sell to a person of his own choosing. Intervening rights of innocent third persons have arisen and cannot now be unilaterally nullified by either of the parties.

Obviously, we cannot countenance a rule which would permit unilateral abrogation of the rights of an innocent third party who undertakes to purchase a residence which is the subject of an equitable distribution order simply because one or both of the former spouses have changed their minds. When the former spouses are not acting in harmonious concert to effect the ordered sale of the residence -- and this is likely to be so whenever, as is not unusual, one of them would prefer to remain in the residence --there is a sense of instability and uncertainty surrounding the projected sale which cannot but discourage prospective purchasers from entering into transaction. This adversely affects the marketability of the property which in turn prejudices both its value and the spouses'

right and opportunity to realize that value. If a potential buyer who is willing to consummate the purchase despite the delays, uncertainties and expense engendered by the spousal controversy, and the continued contumacy of one of them, is not accorded the benefits of his bargain by enforcement of his contractual judicially created rights, the marketability of all property subject to this kind of interspousal dispute would be so undermined as to make it virtually impossible to enforce any sale order entered as part of an equitable distribution scheme.

It is now almost four years since the original judgment was entered and two years since the intervenor executed his contract with plaintiff and obtained the benefit of the court's order requiring defendant to join in the transaction. His rights must be enforced. See R. 1:10-5. If defendant continues in his refusal, the trial judge, on the intervenor's motion, may consider such alternatives as appointment of a receiver to execute the necessary documents or the entry of a self-executing and recordable judgment conveying to the intervenor. See R. 4:59-2(a). And see N.J.S.A. 46:16-1.1.

The orders appealed from are affirmed.

RICHARD W. ENGELBART, ESQ.
59 BOWERS LANE
CLOSTER, NEW JERSEY 07624
TELEPHONE: (201) 489-0055

ATTORNEY FOR INTERVENOR,
MANSOOR A. ARAIN

INA ROSELIN,	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION BERGEN COUNTY
Plaintiff	:	FAMILY PART DOCKET NO. M-3901-79
vs.	:	CAL NO. 79-3643
CHARLES ROSELIN,	:	
Defendant	:	CIVIL ACTION
vs.	:	ORDER
MANSOOR A. ARAIN,	:	
Intervenor		

This matter having been brought before the Court on Motion of Richard W. Engelbart, Esq., attorney for Intervenor, MANSOOR A. ARAIN, and the Court having considered the pleadings filed by Intervenor, and Plaintiff, INA ROSELIN, and Defendant, CHARLES ROSELIN, and for good cause being shown:

It is on this 31 day of March 1987, ordered as follows:

INTERVENOR'S MOTION:

1. With regard to enforcing the order of this Court dated March 28, 1985:

Granted.

2. As to enforcing the order of this Court dated March 12, 1985: Granted

3. With reference to the plaintiff and defendant continuing beyond a reasonable date, to be fixed by the Court, in their refusal to either join in and/or consummate the subject real estate transaction, to wit, sale by plaintiff and defendant to intervenor and contract purchaser, of premises located at 198 South Prospect Avenue, Bergenfield, N.J., for a further order as follows:

(a) The appointment of a receiver to execute the Contract of Sale premises known as 198 South Prospect Avenue, as well as execute a Bargain and Sale Deed, with convenants against Grantor's Acts, and Affidavit of Title to the premises, to sell the same to intervenor; or in the alternative.

In the event either or both plaintiff and defendant fail to execute and deliver a deed within ten days, this Court appoints Kenneth Poller, Esq., 640 Palisade Avenue, Englewood Cliffs, N.J., to execute and deliver a deed to intervenor, and to do all things necessary to be done by plaintiff and defendant to deliver title to intervenor, including closing of title, participating in collection and distribution of proceeds and application to this Court for distribution.

(b) For the Court to execute a judicial deed, and that the Clerk of Bergen County be directed to record a certified copy of the order entered herein in the Book of Deeds in and for the County of Bergen as evidence and Notice of the provisions thereof persuant N.J.S.A. 2A:16-7.

See above.

(c) With regard to an order compelling defendant and any other persons presently living on the subject premises to vacate the premises on date of closing of title and to remove all of their property from the premises and to leave same in broom clean condition:

Granted.

(d) Counsel fees and costs to the undersigned attorney regarding the sale of the house and on this and prior applications herein:

The sum of $250.00, no costs.

DEFENDANT'S CROSS-MOTION:

1. With regard to denying the enforcing of the order of this Court dated March 12, 1985, pursuant to Rule 2:9-5, and to an error apparent of record:

Denied.

2. As to denying the enforcing of the order of this Court dated March 28, 1985, pursuant to Rule

2:9-5, to an error apparent of record, and an error of omission:

Denied.

3. To deny the appointment of a receiver to execute the Contract of Sale of premises known as 198 South Prospect Avenue, Bergenfield, N.J.:

Denied.

4. With regard to denying compelling defendant and his children presently living on the subject premises to vacate same:

Denied.

6. With regard to denying counsel fees and costs to the attorney for the intervenor:

Denied; and

IT IS FURTHER ORDERED that copy of the within Order be served upon all parties and/or attorneys concerned herewith within 5 days of the date of execution herein.

s/ CONRAD W. KRAFTE, J.S.C.

INA ROSELIN,

Plaintiff,

v.

CHARLES D. ROSELIN,

Defendant-Appellant,

v.

MANSOOR A. ARAIN,

Intervenor-Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3648-86T6

ORIGINAL FILED
APPELLATE DIV.
FEB 4 1988
J.G. Trubenbach
Clerk

Submitted January 20 1988 - Decided Feb 4 1988

Before Judges Muir, Jr., and Skillman.

On appeal from Superior Court, Chancery Division-Family Part, Bergen County.

Charles D. Roselin, appellant, filed a brief, pro-se.

No brief filed on behalf of respondent Arain.

PER CURIAM

Defendant, pro-se, appeals from a post-divorce judgment order appointing a receiver to consummate a provision of the divorce judgment directing sale of real estate. The appointment became necessary when defendant refused to comply with the divorce judgment provision and two subsequent orders.

Defendant had appealed the two court orders (but not the judgment) and the Appellate Division affirmed the orders in a decision reported in 208 N.J. SUPER 612 (App. Div 1986). In that decision, the Appellate Division suggested appointment of the receiver as an alternative to defendant's intransigence.

Defendant now appeals, asserting four grounds. The essence of his appeal can best be summarized by a statement contained in the procedural history set out in his brief:

> Said annotated decision (the reported case cited above), affirming the trial court's actions, is alleged herein to be prejudicial and a condonation of abuse of discretion of the trial Court.

Since this appeal constitutes nothing more than an application to reverse the prior reported decision, we find all of defendant's contentions clearly without merit. R. 2:11-3(e)(1)(E).

In so doing, we are constrained to point out that defendant has to recognize he is bound by the rulings in this litigation. He and his former wife had recourse to our system of jurisprudence to resolve their dispute. Once the final resolution of the dispute occurred, they were obligated to follow its dictates. Defendant must now set aside his

obdurate opposition to the court rulings and accept the finality of the decision. He is not free to pick and choose between those aspects of the rulings he favors and those he disfavors. If he were allowed to do so, the legal constraints that govern our society and give meaning to it would be ineffectual.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.
s/ Jack G. Trubenbach
Clerk of the Appellate Division

SUPREME COURT OF NEW JERSEY
C-1005 September Term 1987
28,458

INA ROSELIN,

Plaintiff,

v.

CHARLES D. ROSELIN,

Defendant-Petitioner,

v.

MANSOOR A. ARAIN,

Intervenor-Respondent.

CORRECTED
ORDER
ON
PETITION
FOR
CERTIFICATION

FILED
SEP 12 1988
s/Stephen W. Townsend
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-3648-86T6 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of May, 1988.

s/Stephen W. Townsend
Clerk of the Supreme Court

A TRUE COPY
s/Stephen W. Townsend
CLERK

IN THE SUPREME COURT OF THE STATE OF NEW JERSEY

DOCKET NO.
28,458

INA ROSELIN,

Plaintiff,

v.

CHARLES D. ROSELIN,

Defendant-Petitioner,

v.

MANSOOR A. ARAIN,

Intervenor-Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Charles D. Roselin the Defendant-Petitioner herein, hereby appeals to the Supreme Court of the United States, from the final judgment of the Supreme Court of New Jersey, entered in this action on the 12th day of September, 1988.

This appeal is taken pursuant to 28 U.S.C. 1257.

SENATE, No. 1160

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator CARDINALE

AN ACT concerning the equitable distribution of marital property and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. In any action for divorce or divorce from bed and board, the court shall not order the sale of the marital residence as part of the equitable distribution of marital property unless such order shall include a provision permitting the spouse occupying the marital residence to purchase the marital residence for its market value at the time the judgment of divorce is entered. The proceeds of the sale of the marital residence shall be apportioned between the parties as determined by the court.

2. This act shall take effect immediately and shall apply to any action involving a dispute with regard to the equitable distribution of marital property pending or on appeal.